

37 Am. Jur. 2d Fraud and Deceit § 2

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Fraud and Deceit

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I. Overview

A. In General; Definitions and Types of Fraud

§ 2. Fraud in the inducement; fraud in factum distinguished

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

Fraud encompasses, among other things, the theory of fraudulent inducement.¹ A claim of fraud in the inducement arises when a party is induced to enter into an agreement through fraud or misrepresentation; the fraud relates not to the nature or purport of the contract but to the facts inducing its execution.² Fraud in the inducement, which is a subset of the tort of fraud, occurs when the promisor knows what he or she is signing but his or her consent is induced by fraud, when mutual assent is present, and a contract is formed, which, by reason of the fraud, is voidable.³ A tort of fraudulent inducement means that one has been led by another's guile, surreptitiousness, or other form of deceit to enter into an agreement to his or her detriment.⁴ Fraud in the inducement goes to the means used to induce a party to enter into a contract, and in such cases, the party knows the character of the instrument and intends to execute it, but the contract may be voidable if the party's consent was obtained by false representations.⁵ To state a claim for fraud in the inducement, the party must allege: (1) a material misrepresentation of a presently existing or past fact; (2) an intent to deceive; (3) reasonable reliance on the misrepresentation; and (4) resulting damages.⁶ Fraudulent inducement is a type of fraud that occurs when a material false representation is made and (1) was known to be false when made; (2) was intended to be acted upon; (3) was relied upon; and (4) caused injury.⁷ To prove fraudulent inducement, a plaintiff must establish (1) a false representation concerning a fact or, in the face of a duty to disclose, concealment of a fact, material to the transaction; (2) knowledge of the falsity of the representation or utter disregard for its truthfulness; (3) intent to induce reliance on the representation; (4) justifiable reliance upon the representation under circumstances manifesting a right to rely; and (5) injury proximately caused by the reliance.⁸

Fraud in the factum, as distinguished from fraud in the inducement, means either fraud in the substitution of documents or fraud in the obtaining of execution⁹ or delivery.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Under Indiana law, to prove fraudulent inducement, a party must demonstrate a false material representation of fact; that was made with knowledge or reckless disregard of its falsity with an intent to deceive; and that the party reasonably relied upon the misrepresentation, which was the proximate cause of its injury. [Judson Atkinson Candies, Inc. v. Kenray Associates, Inc.](#), 719 F.3d 635 (7th Cir. 2013).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Iverson v. Johnson Gas Appliance Co.](#), 172 F.3d 524 (8th Cir. 1999) (applying Minnesota law); [Locascio v. James V. Aquavella, M.D., P.C.](#), 185 A.D.2d 689, 586 N.Y.S.2d 78 (4th Dep't 1992); [Amouri v. Southwest Toyota, Inc.](#), 20 S.W.3d 165 (Tex. App. Texarkana 2000).
- ² [ABM Farms, Inc. v. Woods](#), 81 Ohio St. 3d 498, 1998-Ohio-612, 692 N.E.2d 574 (1998).
- ³ [Hinesley v. Oakshade Town Center](#), 135 Cal. App. 4th 289, 37 Cal. Rptr. 3d 364 (3d Dist. 2005).
- ⁴ [Rozen v. Greenberg](#), 165 Md. App. 665, 886 A.2d 924 (2005).
- ⁵ [Heritage Bank v. Bruha](#), 283 Neb. 263, 812 N.W.2d 260, 76 U.C.C. Rep. Serv. 2d 836 (2012).
- ⁶ [Johnson v. Nextel Communications, Inc.](#), 660 F.3d 131 (2d Cir. 2011) (applying New York law).
- ⁷ [Bohnsack v. Varco, L.P.](#), 668 F.3d 262 (5th Cir. 2012) (applying Texas law); [Desta v. Anyaoha](#), 371 S.W.3d 596 (Tex. App. Dallas 2012).
- ⁸ [EBC, Inc. v. Clark Bldg. Systems, Inc.](#), 618 F.3d 253, 77 Fed. R. Serv. 3d 421 (3d Cir. 2010) (applying Pennsylvania law); [Micrel, Inc. v. TRW, Inc.](#), 486 F.3d 866, 62 U.C.C. Rep. Serv. 2d 957 (6th Cir. 2007) (applying Ohio law).
- ⁹ [Gilbert v. Rothschild](#), 280 N.Y. 66, 19 N.E.2d 785, 134 A.L.R. 1 (1939) (stating that if it were shown that there was fraud in the execution of an instrument itself, that a person was induced to sign an instrument different from what he understood it to be, and that no agreement in fact existed, the fraud would lie in the factum); [Gomillion v. Forsythe](#), 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169 (1950).
- ¹⁰ [Blackburn v. Morrison](#), 1910 OK 188, 29 Okla. 510, 118 P. 402 (1910) (a promise by the grantee, on delivery of the deed, to pay the purchase money on the following day).
As to the effect of fraud on the validity of a deed, generally, see [Am. Jur. 2d, Deeds §§ 167 to 171](#).